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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re C.R., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

C.R.,

Defendant and Appellant.

A150666

(Napa County  
Super. Ct. No. JV18241)

C.R. (Minor) was placed on probation for six months without being adjudged a ward of the court after admitting allegations that he possessed a stun gun and possessed marijuana. Then, after he violated terms of his probation, he was adjudged a ward of the court and placed on probation subject to a new set of terms and conditions that included an electronics search condition, authorizing searches of his electronic devices and requiring him to provide any codes to access them. On appeal, Minor argues that the electronics search condition is unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) and unconstitutionally overbroad.<sup>1</sup> We conclude that the condition is reasonable under *Lent*, but overbroad, and therefore we will modify it.

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<sup>1</sup> Our Supreme Court has accepted review of several cases that address the reasonableness and constitutionality of electronic search conditions. (See, e.g., *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923.)

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. *Original Petition***

We draw the underlying facts of Minor's original offense from the probation department report, which summarizes the police report. A police officer was dispatched at 11:00 a.m. on a school day to investigate suspicious persons sitting on a wall in front of a house. One appeared to be holding a gun. Arriving at the scene, the officer contacted Minor, then age 16, and two other minors. Minor smelled of marijuana. When asked if he had any weapons, Minor said he had a stun gun and marijuana in his backpack. A search revealed the stun gun, marijuana, and a broken glass smoking pipe, which appeared to have been attached to a marijuana bong. Minor was then arrested, and when interviewed, he said he had 16 grams of marijuana, and that he did not have his parent's permission to have the stun gun. He said the marijuana was for his own use, but he would sell a "dime sack" to someone who needed one. He said he had left school to retrieve marijuana from a bush outside school property.

The district attorney filed a juvenile wardship petition under Welfare and Institutions Code section 602<sup>2</sup> alleging that Minor possessed a stun gun (count 1), possessed concentrated cannabis (count 2), and possessed 28.5 grams or less of marijuana (count 3). Minor admitted counts 1 and 3, and the district attorney dismissed count 2.

At disposition, Minor was placed on six months' formal probation without wardship, under section 725, subdivision (a), subject to various terms and conditions. Among other things, Minor was required to attend school regularly, obey school rules, not use illegal drugs, complete 16 hours of community services, and attend a counseling program.

### **B. *Probation Violations***

About five months later, the district attorney filed a petition under section 777 to modify the court's order based on probation violations. The petition alleged that Minor

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<sup>2</sup> Further undesignated statutory references are to the Welfare and Institutions Code.

tested positive for, and admitted using, marijuana on four separate occasions, and that Minor possessed tobacco products in school. The court held a contested jurisdiction hearing on the alleged violations, and found true two of the allegations of marijuana use and the allegation of possessing tobacco products.

In advance of the disposition hearing, the probation officer submitted a report stating that Minor had not completed any of his court-ordered community service hours, and that Minor had been discharged from his court-ordered counseling program because of his failure to attend. The program reported, “client withdrew without notice, goals not met.” According to Minor’s counselor at the program, Minor said he was not interested in stopping his substance use. In addition, Minor tested positive for, and admitted using, marijuana during the time between the contested jurisdiction hearing and the preparation of the report. Minor’s progress report from school showed one F, one D+, two C-, and one B, with nine unexcused absences over a period of 100 school days. The report concluded, “Since placement on formal probation without wardship, the minor has demonstrated a disregard for his Court orders, as he continued to test positive for marijuana, not completed his community service hours, failed to follow school rules, failing at least one class, and failed to participate in substance abuse counseling. As a result, it is clear the minor is in need of a higher level of supervision provided on formal probation with wardship.”

At the disposition hearing, Minor was declared a ward of the court and placed on probation subject to terms and conditions that included an electronics search condition.<sup>3</sup> The electronics search condition was imposed over an objection from Minor’s counsel,

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<sup>3</sup> The condition states, “The minor shall submit all electronic devices under their control to search and seizure by any law enforcement or probation officer at any time of the day or night with or without a search warrant, arrest warrant, or reasonable suspicion. The minor shall also disclose any and all passwords, passcodes, password patterns, fingerprints, or other information required to gain access into any electronic device as requested by any law enforcement or probation officer. Contraband seized by the probation officer shall be disposed of, stored or returned at the discretion of the probation officer[.]”

who argued as follows: “I understand the Court’s position on this, there is marijuana usage while he’s on [section 725, subdivision (a)] deferred entry of judgment. And though I understand the Court’s reasoning that a minor must get marijuana from somewhere, and that probation should be allowed to search his phone, I don’t believe that that is—is a specific enough finding. I think there needs to be some actual allegation that he was using his phone, not just that he may have used his phone to get—to get the drugs. Otherwise a cell phone, there is no situation where a cell phone would not be appropriate.”

The court responded: “No. I understand that. And I also understand the importance of the fourth amendment, and the privacy, and the thing that a person wants to keep out of a search condition. [¶] Nonetheless, I think when there is a marijuana allegation, that we know that young people use their devices to find it, and that is something probation ought to be able to examine it to make sure they’re not doing something.”

The probation department added, “[W]e can go back to one of the charges that the minor admitted to was possession of a stun gun. So it’s very important that we have access.” The court then stated it would not change the electronics search condition.

## **DISCUSSION**

### **A. *Applicable Law and Standard of Review***

We summarized some of the relevant law in *In re Edward B.* (2017) 10 Cal.App.5th 1228 (*Edward B.*): “The juvenile court is authorized to ‘impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’ (§ 730, subd. (b).) We review the juvenile court’s probation conditions for abuse of discretion. (*In re P.A.* (2012) 211 Cal.App.4th 23, 33.)

“Well-established principles guide our review. ‘The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents’ [citation], thereby occupying a “unique role . . . in caring for the minor’s well being.” [Citation.] . . . [¶] The permissible scope of discretion in formulating terms of juvenile probation is even greater

than that allowed for adults. “[E]ven where there is an invasion of protected freedoms ‘the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.’ ” [Citation.] . . . Thus, “ ‘a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ” [Citations.]’ (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*))

“The juvenile court’s discretion in imposing conditions of probation is broad but not unlimited. (*In re D.G.* (2010) 187 Cal.App.4th 47, 52 (*D.G.*)). Our Supreme Court has stated criteria for assessing the validity of a probation condition: Upon review, ‘[a] condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality[.]” ’ (*Lent, supra*, 15 Cal.3d at p. 486.) ‘Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.’ (*Ibid.*) Adult and juvenile probation conditions are reviewed under the *Lent* criteria. (*D.G., supra*, 187 Cal.App.4th at p. 52.) A condition that would be improper for an adult is permissible for a juvenile only if it is tailored specifically to meet the needs of the juvenile. (*Id.* at p. 53.) In determining reasonableness, courts look to the juvenile’s offenses and social history. (*Ibid.*)” (*Edward B., supra*, 10 Cal.App.5th at pp. 1232-1233.)

The juvenile court’s discretion in imposing probation conditions is limited not only by the *Lent* reasonableness standard, but also by constitutional principles, and accordingly probation conditions are subject to challenge for overbreadth. A probation condition is “unconstitutionally overbroad . . . if it (1) ‘impinge[s] on constitutional rights,’ and (2) is not ‘tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.’ ” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153 (*E.O.*), quoting *Victor L., supra*, 182 Cal.App.4th at p. 910.) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate

purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*E.O.* at p. 1153.) Although we generally review probation conditions for abuse of discretion, we review constitutional challenges to probation conditions de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

B. *Analysis*

1. *Reasonableness*

The use of electronic devices is not in itself unlawful, and we agree with Minor that the electronics search condition is not directly related to his offense.<sup>4</sup> (See *In re Erica R.* (2015) 240 Cal.App.4th 907, 912-913 (*Erica R.*) [no relationship between electronics search condition and offense where nothing in the petitions or record connects the use of such devices to the offending conduct].) Therefore, under *Lent*, the electronics search condition is valid only if it is reasonably related to Minor’s potential future criminality. (*Lent, supra*, 15 Cal.3d at p. 486.) “Generally speaking, conditions of probation ‘are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer’s being at large. [Citation.] These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed.’ ” (*People v. Olguin* (2008) 45 Cal.4th 375, 380, quoting *Griffin v. Wisconsin* (1987) 483 U.S. 868, 875.) Conditions that are reasonably related to the supervision of a probationer and his or her rehabilitation are reasonably related to potential future criminality. (*Olguin* at pp. 380-381.)

The juvenile court observed that minors use their devices to find marijuana. Here, where Minor has by his own admission used and sold marijuana, and where he has demonstrated on multiple occasions his inability or unwillingness to abide by court-ordered probation conditions, including conditions involving drug use, the juvenile court

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<sup>4</sup> The Attorney General does not address Minor’s argument that there is no connection between the electronics search condition and Minor’s offense, and therefore impliedly concedes the point.

acted within its discretion in imposing the electronics search condition as a means of supervising Minor and monitoring his compliance with the other conditions of his probation. (See *In re P.O.* (2016) 246 Cal.App.4th 288, 298 (*P.O.*) [upholding as reasonable an electronics search condition that enables effective supervision of minor's compliance with other probation conditions]; *In re J.E.* (2016) 1 Cal.App.5th 795, 801, review granted Oct. 12, 2016, S236628 [juvenile court acts within its discretion in imposing electronics search condition "as a means of effectively supervising Minor for his compliance with his drug conditions, as well as the rest of his undisputed probation conditions"].)

In arguing that we should strike the electronics search condition, Minor relies on *Erica R.*, *supra*, 240 Cal.App.4th 907, and *In re J.B.* (2015) 242 Cal.App.4th 749, both of which are inapposite. Neither case concerned the reasonableness of using an electronics search condition to monitor compliance with probation conditions by a juvenile who, like Minor, had a record of violating probation conditions, including conditions prohibiting drug use.

We conclude that the electronics search condition here is reasonable under *Lent*.

## 2. *Overbreadth*

Minor's overbreadth argument is essentially a restatement of his reasonableness argument. He relies on *In re Sheena K.* (2007) 40 Cal.4th 875, 890, to claim that the electronics search condition "bear[s] no relationship to a compelling government interest, and thus [is] unconstitutionally overbroad." But his argument finds no support in the cited portion of *Sheena K.*, which says only this about overbreadth: "A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Ibid.*) To the extent Minor argues that the electronics search condition is not closely tailored to the circumstances of his case, he contends that "it would be difficult if not impossible to narrow the condition in a constitutionally-permissible way," and asks us to strike it.

Although the Attorney General argues that the condition is not overbroad, he acknowledges that in several cases, including *P.O.*, *supra*, 246 Cal.App.4th 288, appellate courts invalidating similar electronics search conditions as overbroad have cured the overbreadth by modifying the conditions, and he proposes that the condition here be limited to “media of communication reasonably likely to reveal involvement with drugs or other criminal activity.”

The record shows that the juvenile court here imposed an electronics search condition to monitor Minor’s compliance with the condition that he not knowingly use or possess illegal drugs, and possibly to monitor his compliance with other conditions as well, including the condition that he not possess weapons or replicas of weapons. We agree with Minor that the wide sweep of the electronics search condition imposed by the juvenile court has implications for his privacy rights, and “could potentially expose a large volume of documents or data, much of which may have nothing to do with illegal activity [including], for example, medical records, financial records, personal diaries, and intimate correspondence with family and friends.” (*People v. Appleton* (2016) 245 Cal.App.4th 717, 725.) In the circumstances here, an electronics search condition as wide-ranging as the one imposed by the juvenile court is overbroad. But we are not persuaded by Minor’s contention that the modification suggested by the Attorney General “cannot adequately protect against unlawful government intrusion.” Perfect protection against infringement of Minor’s rights is not required. (*E.O.*, *supra*, 188 Cal.App.4th at p. 1153.)

Accordingly, we shall modify the electronics search condition by limiting it to media of communication reasonably likely to reveal any involvement with drugs or other criminal activity.

### **DISPOSITION**

The electronics search condition is modified to require Minor to “submit all electronic devices under his control to a search of any media of communication reasonably likely to reveal involvement with drugs or other criminal activity, with or without a search warrant, arrest warrant, or reasonable suspicion, at any time of the day

or night, and provide the probation or peace officer with any passwords, passcodes, password patterns, fingerprints, or other information necessary to access those media of communication as requested.” As so modified, the judgment is affirmed.

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Miller, J.

We concur:

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Richman, Acting P.J.

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Stewart, J.

A150666, *People v. C.R.*